

MAURICE WILLIAMS,)
)
Plaintiff,)
)
v.) No. 4:11CV1588 SNLJ
)
JAMES MURPHY, et al.,)
)
Defendants.)

This matter is before the Court upon the motion of Maurice Williams (registration no. 92079), an inmate at St. Louis City Justice Center, for leave to commence this action without payment of the required filing fee. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$1.00. See 28 U.S.C. § 1915(b)(1). Furthermore, based upon a review of the complaint, the Court finds that the complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the

greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff contends that he has attempted to obtain a certified copy of his prison account statement but that the officials have refused to provide him with one. When a prisoner is unable to provide the Court with a certified copy of his prison account statement, the Court should assess an amount "that is reasonable, based on whatever information the court has about the prisoner's finances." Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). In this instance, the Court will assess an initial partial filing fee of \$1.00.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it "lacks an arguable basis in either law or

fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989); Denton v. Hernandez, 504 U.S. 25, 31 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff’d 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

The Complaint

Plaintiff brings this action under 42 U.S.C. § 1983 for injunctive relief. Named as defendants are James Murphy (Sheriff, City of St. Louis), the St. Louis Medium Security Institution (a/k/a the St. Louis City Justice Center), Francis Slay (Mayor, City of St. Louis), and the City of St. Louis.¹

Plaintiff alleges, in a wholly conclusory manner, that the conditions at the St. Louis City Justice Center (the “Justice Center”) “are deplorable, unhealthy, inhumane, and against federal [and] state established guidelines.” Plaintiff believes that defendant Murphy should be held liable for these alleged conditions because he

¹The Court notes that any claim plaintiff may have had against the State of Missouri was abandoned when plaintiff filed his amended complaint.

oversees the Justice Center. And plaintiff believes defendant Slay should be held liable as mayor.

Discussion

The complaint fails to state a claim upon which relief can be granted because it contains only conclusions and fails to set forth facts that might demonstrate an entitlement to relief.

Additionally, “[l]iability under § 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights.” Madewell v. Roberts, 909 F.2d 1203, 1208 (8th Cir. 1990); see also Martin v. Sargent, 780 F.2d 1334, 1338 (8th Cir. 1985) (claim not cognizable under § 1983 where plaintiff fails to allege that defendant was personally involved in or directly responsible for the incidents that injured plaintiff); Boyd v. Knox, 47 F.3d 966, 968 (8th Cir. 1995) (respondeat superior theory inapplicable in § 1983 suits). In the instant action, plaintiff has not set forth any facts indicating that defendants Murphy or Slay were directly involved in or personally responsible for the alleged violations of his constitutional rights. As a result, the complaint fails to state a claim upon which relief can be granted as to these defendants for this reason as well.

Moreover, to state a claim against the City of St. Louis, plaintiff must allege that a policy or custom of the government entity is responsible for the alleged

constitutional violation. Monell v. Dep't of Social Services, 436 U.S. 658, 690-91 (1978). The instant complaint does not contain any allegations that a policy or custom of the City was responsible an alleged violation of plaintiff's constitutional rights. As a result, the complaint fails to state a claim upon which relief can be granted as to the City for this reason as well.

Finally, plaintiff's claim against the Justice Center is legally frivolous because it is not a suable entity. Ketchum v. City of West Memphis, Ark., 974 F.2d 81, 81 (8th Cir. 1992) (departments or subdivisions of local government are "not juridical entities suable as such.").

Accordingly,

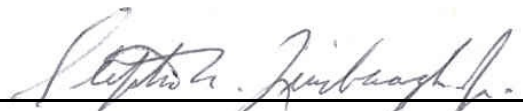
IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #3] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$1.00 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 4th day of October, 2011.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE